

DECISION



12495 PLM-11 Mr. Pieginger
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-195349 *personal names*

DATE: January 10, 1980

MATTER OF: Colonel Arthur W. Hyland, USAF, Retired
Major Harry R. Park, USAF, Retired

- DIGEST: 1. Under the Survivor Benefit Plan (SBP) where a member, married at the time of retirement or in the case of a member who retired before the effective date of the SBP, was married prior to March 21, 1974, and initially elects coverage for that spouse, divorces that spouse and later remarries that former spouse, such spouse on remarriage is exempt from the 1-year waiting period before becoming an eligible beneficiary. Thus, further reduction in retired pay for such coverage begins on the first of the month after remarriage, unless remarriage was the first of the month. See 57 Comp. Gen. 847 (1978).
2. Under the Survivor Benefit Plan, where a member not married at the time of initial election into the Plan, but who marries thereafter and elects coverage for that spouse, divorces that spouse, and later remarries that former spouse, such spouse would not qualify as an eligible spouse beneficiary until the first anniversary of the remarriage or the date such spouse becomes the parent of issue by the remarriage. Thus, further reduction in retired pay for such coverage begins on the first of the month after occurrence of the earlier of those events unless the event occurred on the first of the month. See 57 Comp. Gen. 847 (1978).

DLG 03346
This action is in response to a request for advance decision from the Air Force Accounting and Finance Center on several questions concerning the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455, involving the proper inception date of spouse coverage on remarriage and thus the effective date for reduction in retired pay. Specific *and*

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reference is made to the cases of Colonel Arthur W. Hyland, USAF, Retired, and Major Harry R. Park, USAF, Retired. The submission has been assigned Air Force submission No. DO-AF-1325 by the Department of Defense Military Pay and Allowance Committee.

The following questions are asked:

"a. Is the spouse who was married to the member on the date of retirement, later divorced, and then remarried to the spouse, exempt from the one year waiting period before becoming an eligible beneficiary?

"b. If the answer to a is in the affirmative, what is the effective date for cost of coverage?

"c. Does the same determination hold true for the spouse, not married to the member at time of retirement, who is later divorced, but then remarries the member?

"d. Is the effective date of cost the same as given in b above? If the answer is in the negative, what is the effective date of the cost deduction for item c?"

Colonel Hyland was retired from the Air Force under the provisions of 10 U.S.C. 8911, effective June 1, 1973. He elected coverage for his wife, Hilda, and their daughter, Judi, born September 22, 1956. Child coverage was terminated as of September 30, 1975, but spouse coverage continued until a final divorce decree was submitted by the member in September 1977, which showed that he and Hilda had been divorced on August 25, 1977. As a result, a refund for spouse coverage was made to him for September 1977 and reduction in his retired pay for that coverage was suspended effective October 1977.

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By letter dated December 5, 1977, Colonel Hyland informed the Air Force that he had remarried his former wife, Hilda, on November 30, 1977. The enclosures with the submission indicate that deductions from his retired pay for spouse coverage were resumed effective November 1977, which action has been questioned by Colonel Hyland.

The facts in Major Park's case are that he was also retired from the Air Force under the provisions of 10 U.S.C. 8911, but that such retirement was effective November 11, 1962, prior to the effective date of the SBP. On September 11, 1973, he elected full SBP coverage as authorized by subsection 3(b) of Public Law 92-425, for his wife, Jean (whom he married after his retirement), and their children Lorien, born January 18, 1968, and Steven, born April 3, 1972. In April 1976, he furnished the Air Force a copy of a divorce decree showing that he and Jean had been divorced on December 22, 1975. On May 12, 1978, he advised the Air Force that he had remarried his former wife, Jean, on April 24, 1978.

Reduction of retired pay for spouse coverage in Major Park's case apparently continued until he reported the remarriage, because at the time refund was made to him, it covered the period October 1, 1976, through March 31, 1978, pursuant to Public Law 94-496, and our decision B-192127, September 25, 1978 (57 Comp. Gen. 847). However, reduction in retired pay for spouse coverage was resumed for April 1978, the month of remarriage.

Section 1447 of title 10, United States Code, as amended, as it relates to the cases described in the submission, defines "widow" in subsection (3) to mean:

"* * * the surviving wife of a person who, if not married to the person at the time he becomes eligible for retired or retainer pay--

"(A) was married to him for at least one year immediately before his death; or

"(B) is the mother of issue by that marriage."

Subsection (3) similarly defines "widower."

In 56 Comp. Gen. 1022 (1977), wherein we ruled in part that the term "eligible spouse beneficiary" is to be defined in terms of 10 U.S.C. 1447(3) and (4) definitions, we stated at pages 1024-1025, in response to question 1 therein, that:

"Basically, the spouse of a member who elects to participate in SBP and who was married at retirement (or who was retired prior to the SBP effective date and was married before March 21, 1974), would immediately qualify as an eligible widow or widower under 10 U.S.C. 1450(a) as those terms are defined in 10 U.S.C. 1447, in the event of the retired member's death. We have held that the restrictive language contained in 10 U.S.C. 1447 is only applicable to surviving spouses of post-SBP, post-retirement marriages. See 53 Comp. Gen. 470 (1974); id. 818 (1974); and 54 Comp. Gen. 266 (1974).

"It is clearly evident from the foregoing that spouses, by virtue of that status alone, are not considered to be on equal footing for SBP purposes. The legislative history shows that Congress sought to prevent spouse survivors, who acquire such status only by virtue of a 'death bed' marriage, from automatically receiving the annuity upon the death of the member. This category of spouses is required by Congress to satisfy either of the two conditions stipulated in 10 U.S.C. 1447(3)(A) and (B) or (4)(A) and (B) in order to be eligible to receive a survivor annuity under 10 U.S.C. 1450(a).

"It is our view, therefore, that in order to become an eligible widow or widower beneficiary upon the death of an SBP participant * * * if not married to the member at the time of

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initial election into the Plan, he or she must have been married to the member for at least 1 year immediately before the member's death or be the parent of issue born of that marriage."

Therefore, question a., is answered by saying that when a member remarries a former spouse who had been married to the member at retirement, and was initially provided spouse coverage under the SBP such spouse upon remarriage is exempt from the 1-year waiting period before becoming an eligible spouse beneficiary. The same is true in the case of a pre-SBP effective date retiree, under similar circumstances whose widow was married to the member prior to March 21, 1974, the last day such a member could elect to participate in the SBP.

Question c. is answered by saying that where the initial marriage was contracted after the effective date of the SBP and after the member retired, and the member divorced such spouse and later remarried that former spouse, such spouse does not qualify as an eligible spouse beneficiary until the earlier of the two dates provided in 10 U.S.C. 1447(3) or (4), as the case may be. That is, either the first anniversary of the remarriage, or the date such spouse becomes the parent of issue of that marriage. Such spouse does not otherwise qualify under the definition of "widow" or "widower" as used in section 1447 because they were not married at the time the member became entitled to retired or retainer pay.

For SBP cost charging purposes, question b. is answered by saying that the effective date for further reduction of retired pay for the cost of spouse coverage in question a. remarriages, is the first of the month following the date of remarriage, unless that date was the first of the month, in which case, charges would be made for that month. In answer to question d., cost charge assessments for remarriages described in question c. would be made on the first of the month following the earlier of either the first anniversary

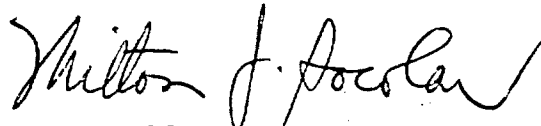
of that remarriage, or the date such spouse becomes a parent of issue by that marriage unless that date was on the first of the month, in which case charges would be made for that month. 57 Comp. Gen. 847.

As the foregoing relates to Colonel Hyland's case, the response to question a. and b. are for application since he was married to Hilda prior to retirement and prior to his SBP election. It is noted that a refund was made to him for September 1977 and the SBP cost assessment suspended for October 1977. Apparently, because the member remarried on November 30, 1977, the cost of spouse coverage was reestablished for the month of November. Under the guidelines set forth in 57 Comp. Gen. 847, supra, such coverage costs are to be reestablished on December 1, 1977, for that month and the coverage charge assessed him for November 1977, should be refunded.

With regard to Major Park, the responses to questions a. and b. are also for application since he was married to Jean at the time of his SBP entry as a section 3(b) participant. It is noted that a refund was made to him for the period October 1, 1976, through March 31, 1978. We presume that appropriate recomputation of child only coverage was made effective October 1, 1976, before the spouse coverage refund was made to him. See response to question b. of 57 Comp. Gen. 847, 850-852. In addition to that refund, a refund would be due him for the month of April 1978. While it is proper to further recompute "spouse and children" coverage as of April 24, 1978, based on the various ages of the members of his family on remarriage, assessment of "spouse and children" coverage would not be resumed until May 1, 1978, for that month. See responses to questions d., and e., of 57 Comp. Gen. 847, 853.

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Accordingly, the vouchers are being returned to the Air Force Accounting and Finance Center for modification and payment consistent with the foregoing.

A handwritten signature in dark ink, appearing to read "Milton J. Fowler", with a large, sweeping flourish at the end.

For The Comptroller General
of the United States